

Mar 01, 2018

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

RODOLFO LEMUS-AGUILERA

Defendant.

NO: 2:17-CR-114-RMP

ORDER OF DISMISSAL

BEFORE THE COURT are motions by the Government to dismiss the Indictment in this case without prejudice pursuant to Fed. R. Crim. P. Rule 48(a), ECF No. 54, and a motion by Defendant to dismiss the Indictment with prejudice for constitutional deficiencies in the underlying deportation, ECF No. 52. On February 28, 2018, Defendant filed a notice of his decision to withdraw his own motion to dismiss and consent to the dismissal without prejudice that the Government seeks. ECF No. 58.

When a defendant consents to the government's move to dismiss, the district court's discretion to deny the government's motion is tightly constrained, if it

1 exists at all. *See Rinaldi v. United States*, 434 U.S. 22, 29 n. 15 (1977) (per
2 curiam) (reserving judgment on the question of whether a district court has any
3 discretion to deny an uncontested motion to dismiss under Rule 48(a)); *United*
4 *States v. Garcia-Valenzuela*, 232 F.3d 1003, 1008 (9th Cir. 2000); *United States v.*
5 *Gonzalez*, 58 F.3d 459, 462 (9th Cir. 1995). The only circumstance that the Ninth
6 Circuit has thus far articulated as a basis to reject an uncontested motion to dismiss
7 without prejudice from the government is when the prosecution's reasons for
8 dismissal are "clearly contrary to manifest public interest." *Gonzalez*, 58 F.3d at
9 461.

10 The Court notes Defendant's consent to the Government's motion for
11 dismissal and, further, does not find any indication that dismissal without prejudice
12 under Rule 48(a) contravenes the "manifest public interest." *See Gonzalez*, 58
13 F.3d at 461.

14 Accordingly, **IT IS HEREBY ORDERED:**

- 15 1. Defendant's Motion to Dismiss, **ECF No. 52**, is **STRICKEN**.
16 2. The Government's Motion to Dismiss Pursuant to Rule 48(a), **ECF**
17 **No. 54**, is **GRANTED**.
18 3. The Indictment, ECF No. 33, is **dismissed without prejudice**.

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4. Any pending motions are **denied as moot** and all upcoming deadlines and hearings are **vacated**.

The District Court Clerk is directed to enter this Order and provide copies to counsel, and **close this case**.

DATED March 1, 2018.

s/ Rosanna Malouf Peterson
 ROSANNA MALOUF PETERSON
 United States District Judge